

Calendar No. 356

105TH CONGRESS
2^D SESSION**S. 1618****[Report No. 105–183]**

To amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by telecommunications carriers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 1998

Mr. MCCAIN (for himself, Mr. HOLLINGS, Ms. SNOWE, Mr. FRIST, Mr. REED, Mr. BRYAN, Mr. DORGAN, Mr. JOHNSON, Mr. HARKIN, Mr. KERRY, Mr. INOUE, Mr. ABRAHAM, Mr. BAUCUS, Mr. LOTT, Mr. SMITH of Oregon, Mr. SMITH of New Hampshire, Mr. GORTON, and Mr. SHELBY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 5, 1998

Reported by Mr. MCCAIN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by telecommunications carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. IMPROVED PROTECTION FOR CONSUMERS**
 2 **AGAINST “SLAMMING” BY TELECOMMUNI-**
 3 **CATIONS CARRIERS. CONSUMERS.**

4 (a) VERIFICATION OF AUTHORIZATION.—Subsection
 5 (a) of section 258 of the Communications Act of 1934 (47
 6 U.S.C. 258) is amended to read as follows:

7 “(a) PROHIBITION.—

8 “(1) IN GENERAL.—No telecommunications
 9 ~~carrier shall~~ *carrier or reseller of telecommunications*
 10 *services shall* submit or execute a change in a sub-
 11 scriber’s selection of a provider of telephone ex-
 12 change service or telephone toll service except in ac-
 13 cordance with this section and such verification pro-
 14 cedures as the Commission shall prescribe.

15 “(2) VERIFICATION.—

16 “(A) IN GENERAL.—In order to verify a
 17 subscriber’s selection of a telephone exchange
 18 service or telephone toll service provider under
 19 this section, the telecommunications carrier *or*
 20 *reseller* shall, at a minimum, require the sub-
 21 scriber—

22 “(i) to acknowledge the type of service
 23 to be changed as a result of the selection;

24 “(ii) to affirm the subscriber’s intent
 25 to select the provider as the provider of
 26 that service;

1 “(iii) to affirm that ~~the subscriber~~ *the*
 2 *consumer is the subscriber or* is authorized
 3 to select the provider of that service for the
 4 telephone number in question;

5 “(iv) to acknowledge that the selection
 6 of the provider will result in a change in
 7 providers of that service; *and*

8 ~~“(v) to acknowledge that the individ-~~
 9 ~~ual making the oral communication is the~~
 10 ~~subscriber; and~~

11 ~~“(vi) (v)~~ to provide such other infor-
 12 mation as the Commission considers appro-
 13 priate for the protection of the subscriber.

14 “(B) ADDITIONAL REQUIREMENTS.—The
 15 procedures prescribed by the Commission to
 16 verify a subscriber’s selection of a provider
 17 shall—

18 “(i) preclude the use of negative op-
 19 tion marketing;

20 “(ii) provide for verification of a
 21 change in telephone exchange service or
 22 telephone toll service provider in oral, writ-
 23 ten, or electronic form; and

24 “(iii) require the retention of such
 25 verification in such manner and form and

1 for such time as the Commission considers
2 appropriate.

3 “(3) INTRASTATE SERVICES.—Nothing in this
4 section shall preclude any State commission from en-
5 forcing such procedures with respect to intrastate
6 services.

7 “(4) SECTION NOT TO APPLY TO WIRELESS.—
8 This section does not apply to a provider of commer-
9 cial mobile service, as that term is defined in section
10 332(d)(1) of this Act.”.

11 (b) RESOLUTION OF COMPLAINTS.—Section 258 of
12 the Communications Act of 1934 (47 U.S.C. 258) is
13 amended by adding at the end thereof the following:

14 “(c) NOTICE TO SUBSCRIBER.—Whenever there is a
15 change in a subscriber’s selection of a provider of tele-
16 phone exchange service or telephone toll service, the tele-
17 communications carrier *or reseller* selected shall notify the
18 subscriber in writing, not more than 15 days after the
19 change is ~~executed, of the change, the date on which the~~
20 ~~change was effected, and the name of the individual who~~
21 ~~authorized the change.~~ *processed by the telecommunications*
22 *carrier or the reseller—*

23 (1) *of the subscriber’s new carrier; and*

24 (2) *that the subscriber may request information*
25 *regarding the date on which the change was agreed to*

1 *and the name of the individual who authorized the*
 2 *change.*

3 “(d) RESOLUTION OF COMPLAINTS.—

4 “(1) PROMPT RESOLUTION.—

5 “(A) IN GENERAL.—The Commission shall
 6 prescribe a period of time, not in excess of 120
 7 ~~days, for a~~ *days after a telecommunications car-*
 8 *rier or reseller receives notice, for the tele-*
 9 *communications carrier or reseller* to resolve a
 10 complaint by a subscriber concerning an unau-
 11 thorized change in the subscriber’s selection of
 12 a provider of telephone exchange service or tele-
 13 phone toll service.

14 “(B) UNRESOLVED COMPLAINTS.—If a
 15 telecommunications carrier *or reseller* fails to
 16 resolve a complaint within the time period pre-
 17 scribed by the Commission, then, within 10
 18 days after the end of that period, the tele-
 19 communications carrier *or reseller* shall—

20 “(i) notify the subscriber in writing of
 21 the subscriber’s right to file a complaint
 22 with the Commission concerning the unre-
 23 solved complaint, the subscriber’s rights
 24 under this section, and all other remedies

1 available to the subscriber concerning un-
2 authorized changes;

3 “(ii) inform the subscriber in writing
4 of the procedures prescribed by the Com-
5 mission for filing such a complaint; and

6 “(iii) provide the subscriber a copy of
7 any evidence in the carrier’s *or reseller’s*
8 possession showing that the change in the
9 subscriber’s provider of telephone exchange
10 service or telephone toll service was sub-
11 mitted or executed in accordance with the
12 verification procedures prescribed under
13 subsection (a).

14 “(2) RESOLUTION BY COMMISSION.—The Com-
15 mission shall provide a simplified process for resolv-
16 ing complaints under paragraph (1)(B). The sim-
17 plified procedure shall preclude the use of interro-
18 gatories, depositions, discovery, or other procedural
19 techniques that might unduly increase the expense,
20 formality, and time involved in the process. The
21 Commission shall issue an order resolving any such
22 complaint at the earliest date practicable, but in no
23 event later than—

1 “(A) 150 days after the date on which it
 2 received the complaint, with respect to liability
 3 issues; and

4 “(B) 90 days after the date on which it re-
 5 solves a complaint, with respect to damages
 6 issues, if such additional time is necessary.

7 “(3) DAMAGES AWARDED BY COMMISSION.—In
 8 resolving a complaint under paragraph (1)(B), the
 9 Commission may award damages equal to the great-
 10 er of \$500 or the amount of actual damages. The
 11 Commission may, in its discretion, increase the
 12 amount of the award to an amount equal to not
 13 more than 3 times the amount available under the
 14 preceding sentence.

15 “(e) PENALTY.—

16 “(1) IN GENERAL.—Unless the Commission de-
 17 termines that there are mitigating circumstances,
 18 violation of subsection (a) is punishable by a fine of
 19 not less than \$40,000 for the first offense, and not
 20 less than \$150,000 for each subsequent offense.

21 “(2) FAILURE TO NOTIFY TREATED AS VIOLA-
 22 TION OF SUBSECTION (a).—If a telecommunications
 23 carrier *or reseller* fails to comply with the require-
 24 ments of subsection (d)(1)(B), then that failure shall
 25 be treated as a violation of subsection (a).

1 “(f) RECOVERY OF FINES.—The Commission may
2 take such action as may be necessary—

3 “(1) to collect any fines it imposes under this
4 section; and

5 “(2) on behalf of any subscriber, any damages
6 awarded the subscriber under this ~~section.~~” *section.*

7 (g) *CHANGE INCLUDES INITIAL SELECTION.*—*For pur-*
8 *poses of this section, the initiation of service to a subscriber*
9 *by a telecommunications carrier or a reseller shall be treat-*
10 *ed as a change in a subscriber’s selection of a provider of*
11 *telephone exchange service or telephone toll service.*

12 (c) STATE RIGHT-OF-ACTION.—Section 258 of the
13 Communications Act of 1934 (47 U.S.C. 258), as amend-
14 ed by subsection (b), is amended by adding at the end
15 thereof the following:

16 “~~(g)~~ (h) ACTIONS BY STATES.—

17 “(1) AUTHORITY OF STATES.—Whenever the
18 attorney general of a State, or an official or agency
19 designated by a State, has reason to believe that a
20 telecommunications carrier *or reseller* has engaged or
21 is engaging in a pattern or practice of changing tele-
22 phone exchange service or telephone toll service pro-
23 vider without authority from subscribers in that
24 State in violation of this section or the regulations
25 prescribed under this section, the State may bring a

1 civil action on behalf of its residents to enjoin such
2 unauthorized changes, an action to recover for ac-
3 tual monetary loss or receive \$500 in damages for
4 each violation, or both such actions. If the court
5 finds the defendant willfully or knowingly violated
6 such regulations, the court may, in its discretion, in-
7 crease the amount of the award to an amount equal
8 to not more than 3 times the amount available
9 under the preceding sentence.

10 “(2) EXCLUSIVE JURISDICTION OF FEDERAL
11 COURTS.—The district courts of the United States,
12 the United States courts of any territory, and the
13 District Court of the United States for the District
14 of Columbia shall have exclusive jurisdiction over all
15 civil actions brought under this subsection. Upon
16 proper application, such courts shall also have juris-
17 diction to issue writs of mandamus, or orders afford-
18 ing like relief, commanding the defendant to comply
19 with the provisions of this section or regulations pre-
20 scribed under this section, including the requirement
21 that the defendant take such action as is necessary
22 to remove the danger of such violation. Upon a prop-
23 er showing, a permanent or temporary injunction or
24 restraining order shall be granted without bond.

1 “(3) RIGHTS OF COMMISSION.—The State shall
2 serve prior written notice of any such civil action
3 upon the Commission and provide the Commission
4 with a copy of its complaint, except in any case
5 where such prior notice is not feasible, in which case
6 the State shall serve such notice immediately upon
7 instituting such action. The Commission shall have
8 the right—

9 “(A) to intervene in the action;

10 “(B) upon so intervening, to be heard on
11 all matters arising therein; and

12 “(C) to file petitions for appeal.

13 “(4) VENUE; SERVICE OF PROCESS.—Any civil
14 action brought under this subsection in a district
15 court of the United States may be brought in the
16 district wherein the defendant is found or is an in-
17 habitant or transacts business or wherein the viola-
18 tion occurred or is occurring, and process in such
19 cases may be served in any district in which the de-
20 fendant is an inhabitant or where the defendant may
21 be found.

22 “(5) INVESTIGATORY POWERS.—For purposes
23 of bringing any civil action under this subsection,
24 nothing in this section shall prevent the attorney
25 general of a State, or an official or agency des-

1 ignated by a State, from exercising the powers con-
 2 ferred on the attorney general or such official by the
 3 laws of such State to conduct investigations or to
 4 administer oaths or affirmations or to compel the at-
 5 tendance of witnesses or the production of documen-
 6 tary and other evidence.

7 “(6) EFFECT ON STATE COURT PROCEED-
 8 INGS.—Nothing contained in this subsection shall be
 9 construed to prohibit an authorized State official
 10 from proceeding in State court on the basis of an al-
 11 leged violation of any general civil or criminal stat-
 12 ute of such State.

13 “(7) LIMITATION.—Whenever the Commission
 14 has instituted a civil action for violation of regula-
 15 tions prescribed under this section, no State may,
 16 during the pendency of such action instituted by the
 17 Commission, subsequently institute a civil action
 18 against any defendant named in the Commission’s
 19 complaint for any violation as alleged in the Com-
 20 mission’s complaint.

21 “(8) DEFINITION.—As used in this subsection,
 22 the term ‘attorney general’ means the chief legal of-
 23 ficer of a State.

24 “~~(h)~~ (i) STATE LAW NOT PREEMPTED.—Nothing in
 25 this section or in the regulations prescribed under this sec-

1 tion shall preempt any State law that imposes more re-
 2 strictive intrastate requirements or regulations on, or
 3 which prohibits unauthorized changes in, a subscriber's se-
 4 lection of a provider of telephone exchange service or tele-
 5 phone toll service.”.

6 (d) *REPORT ON CARRIERS EXECUTING UNAUTHOR-*
 7 *IZED CHANGES OF TELEPHONE SERVICE.—*

8 (1) *REPORT.—Not later than October 31, 1998,*
 9 *the Federal Communications Commission shall sub-*
 10 *mit to Congress a report on unauthorized changes of*
 11 *subscribers' selections of providers of telephone ex-*
 12 *change service or telephone toll service.*

13 (2) *ELEMENTS.—The report shall include the fol-*
 14 *lowing:*

15 (A) *A list of the 10 telecommunications car-*
 16 *riers that, during the 1-year period ending on*
 17 *the date of the report, were subject to the highest*
 18 *number of complaints of having executed unau-*
 19 *thorized changes of subscribers from their selected*
 20 *providers of telephone exchange service or tele-*
 21 *phone toll service when compared with the total*
 22 *number of subscribers served by such carriers.*

23 (B) *The telecommunications carriers, if*
 24 *any, assessed fines under section 258(e) of the*
 25 *Communications Act of 1934 (as added by sub-*

1 *section (c)), during that period, including the*
 2 *amount of each such fine and whether the fine*
 3 *was assessed as a result of a court judgment or*
 4 *an order of the Commission or was secured pur-*
 5 *suant to a consent decree.*

6 **SEC. 2. REPORT ON TELEMARKETING PRACTICES.**

7 (a) IN GENERAL.—The Federal Communications
 8 Commission shall issue a report within 180 days after the
 9 date of enactment of this Act on the telemarketing prac-
 10 tices used by telecommunications carriers *or resellers* or
 11 their agents or employees for the purpose of soliciting
 12 changes by subscribers of their telephone exchange service
 13 or telephone toll service provider.

14 (b) SPECIFIC ISSUES.—As part of the report required
 15 under subsection (a), the Commission shall include find-
 16 ings on—

17 (1) the extent to which imposing penalties on
 18 telemarketers would deter unauthorized changes in a
 19 subscriber’s selection of a provider of telephone ex-
 20 change service or telephone toll service;

21 (2) the need for rules requiring third-party ver-
 22 ification of changes in a subscriber’s selection of
 23 such a provider; and

24 (3) whether wireless carriers should continue to
 25 be exempt from the verification and retention re-

1 quirements imposed by section 258(a)(2)(B)(iii) of
2 the Communications Act of 1934 (47 U.S.C.
3 258(a)(2)(B)(iii)).

4 (c) RULEMAKING.—If the Commission determines
5 that particular telemarketing practices are being used with
6 the intention to mislead, deceive, or confuse subscribers
7 and that they are likely to mislead, deceive, or confuse
8 subscribers, then the Commission shall initiate a rule-
9 making to prohibit the use of such practices within 120
10 days after the completion of its report.

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